California Regional Water Quality Control Board
Santa Ana Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

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June 21, 2002

Mr. Ken A. Miller
Director of Public Works
County of San Bernardino
825 East Third Street
San Bernardino, CA 92415-0835

RESPONSE TO COMMENTS ON THE WASTE DISCHARGE REQUIREMENTS FOR THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, SAN BERNARDINO COUNTY AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY, AREAWIDE URBAN STORM WATER RUNOFF, ORDER NO. R8-2002-0012, NPDES NO. CAS618036

Enclosed is our response to your April 25, 2002 comments on Order No. R8-2002-0012, submitted during the Regional Board hearing on April 26, 2002. We were unable to respond to these comments in writing prior to the Board hearing due to the late submittal. However, some of the comments were discussed during the Board hearing and changes were incorporated in the final version of the Order transmitted to you on May 10, 2002. A majority of the remaining comments are repetitions of previous comments that we feel had been adequately addressed as indicated in our response.

The response to comments have been posted on the Region 8 website. To view and/or download a copy of the response to comments and the adopted requirements, please access our website at *http://www.swrcb.ca.gov/rwqcb8*.

If you have any questions regarding this matter, please call me at (909) 782-3284 or Muhammad Bashir at (909) 320-6396.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Response to Comments on Order No. R8-2002-0012

Cc: With enclosure, NPDES Permittees, list attached.

RESPONSE TO COMMENTS ON THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT'S COMMENTS SUBMITTED ON APRIL 26, 2002.

1. **Comment**: Finding 12. This finding, together with the footnote, is not sufficient to clarify that urban runoff from National Forests is not urban runoff. Revise to reflect Fact Sheet Item IV – Project Area. Suggested text follows.

   This Order regulates urban storm water runoff[2] from areas under the jurisdiction of the permittees. The term storm water as used in this Order includes storm water runoff, snowmelt runoff, and surface runoff and drainage. The permittees have jurisdiction over and/or maintenance responsibility for storm water conveyance systems within San Bernardino County. Areas of the County not addressed or which are excluded under the storm water regulations and areas not under the jurisdiction of the permittees are excluded from coverage under this permit. These areas or activities include the following: federal lands and state properties, including, but not limited to, military bases, national forests, hospitals, schools, colleges and universities, and highways; Native American tribal lands; open space and rural (non-urbanized) areas; agricultural lands; and utilities and special districts. ~~The permittees may lack legal jurisdiction over storm water discharges into their systems from some of the State and federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies and other point and non-point source discharges otherwise permitted by the Regional Board.~~ The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges.

   Response: This item had already been addressed in our earlier response; please see our response to Comment 185, March 22, 2002 response to comments.

2. **Comment**: Finding 24. This finding does not distinguish the significant difference permittee agencies (and the departments, divisions, and subdivisions therein) and other agencies with a presence in San Bernardino County. This lack of distinction causes confusion with respect to the lines of responsibility under the permit. The permittees clearly acknowledge that their status as permittees includes all subdivisions within their agency. The permittees request that the Regional Board clearly acknowledge that there are agencies within the County of San Bernardino that 1) are not permittees, and 2) are cannot be regulated by the permittees. Suggested text follows.

   Successful implementation of the provisions and limitations in this order will require cooperation among and between the permittees. The permittees have developed an Implementation Agreement among the SBCFCD, the County and the cities. The Implementation Agreement establishes the responsibilities of each party and a funding mechanism for the shared costs, and recognizes the Management Committee. Furthermore, within each individual permittee's agency, successful implementation of the this order will require the cooperation of the various departments, divisions, and subdivisions of the permittee. The permittees have

developed inter-departmental training programs and have made commitments to conduct a certain number of these training programs during the term of this permit as a means to facilitate agency-wide compliance with this order.

Successful implementation of the provisions and limitations in this Order will require the cooperation of other entities and all the public agency organizations within San Bernardino County ~~(e.g., Fire Department, Building and Safety, Code Enforcement, Planning, etc.)~~ having programs/activities that have an impact on storm water quality. Some of these organizations are not regulated under this Order~~.~~ (A list of these organizations is included in Attachment 3~~.~~). As such, these organizations are expected to actively participate in implementing the San Bernardino County NPDES Storm Water Program. ~~The permittees have developed inter-departmental training programs and have made commitments to conduct a certain number of these training programs during the term of this permit.~~ If any entity such as those listed in Attachment 3 is determined to cause or contribute to violations of this Order, the Regional Board has the discretion and authority to require the non-cooperating entity to participate in this area-wide permit (subject to entering into the Implementation Agreements) or obtain individual storm water discharge permits, pursuant to 40 CFR 122.26(a). ~~The permittees have developed an Implementation Agreement among the SBCFCD, the County and the cities. The Implementation Agreement establishes the responsibilities of each party and a funding mechanism for the shared costs, and recognizes the management committee.~~

Response: This issue had been addressed in our response to Comment 188 of our March 22, 2002 response to comments.

3. **Finding 42.** This finding states that the permit may be reopened to include Total Maximum Daily Loads (TMDLs) and/or other requirements developed and adopted by the Regional Board. The permittees do not disagree with the Regional Board's authority to reopen permits. However, the finding should be revised to indicate that it is the implementation provisions and waste load allocations (WLA) that are derived from the TMDL that could be included in the permit in the future, and that the MEP standard will be applied, notwithstanding TMDLs, WLAs, or implementation plans.

   Response: Please note that the MEP standard does not apply to the implementation provision of the TMDLs; this is consistent with NPDES regulations 40CFR Part 122.44(d)(vii)(B).

4. **Comment:** Finding 52. This finding states that the adoption of this permit is exempt from CEQA. We disagree with this position and request a full and adequate review in accordance with CEQA prior to adoption of the permit. The exemption provided in the California Water Code is applicable to actions required by the CWA. Clearly, this permit includes actions outside and beyond the limits of the CWA, thus, at a

minimum, those provisions must be withdrawn until they can be adequately reviewed under the lawful guidelines of the State and CEQA**.**

Response: Please note that the permit implements the federal Clean Water Act and the State Board has determined that the CEQA exemption contained in Section 13389 is applicable (see State Board Order No. WQ 2000-11). Also see our response to comment #104 from CICWQ in our March 22, 2002 response to comments.

5. **Comment:** I.1. Responsibilities of the Principal Permittee. This item gives the Executive Officer of the Regional Board unilateral authority to require the District to conduct various water quality-monitoring activities. While this provision allows the District and the Executive Officer to work together cooperatively, the unilateral nature of the provision leaves the District vulnerable to requirements for extensive monitoring. Suggested text follows.

   Conduct chemical, biological, and bacteriological water quality monitoring as required by Monitoring and Reporting Program No. R-8-2002-0012 ~~the Executive Officer of the Regional Board~~.

   Response: The provision granting the Executive Officer authority to modify the Monitoring and Reporting Program, rather than Regional Board adoption of such changes, avoids unnecessary delays to minor revisions to the monitoring program. However, any changes to the monitoring requirements made by the Executive Officer can be appealed to the Regional Board.

6. **Comment:** I.14. This responsibility is not pertinent to the District when acting as principal permittee, and if left as is, suggests that the District will take on area-wide responsibility for enforcement actions. This responsibility is pertinent to the District with respect to its facilities. Therefore, I.14 should be moved down to the point immediately following the text, "In addition, the activities….owned and operated by the SBCFCD:" and immediately before I.15. Additionally, the word, 'ensure' should be deleted. The language should be consistent with and similar to II.11.

   Response: Please see the corrections.

7. **Comment:** II. 2. Responsibilities of the Co-Permittees **-** The intent of this provision is not clear, and it appears the Regional Board is acting outside of its authority. The permittees are clearly committed to maintaining adequate legal authority to require compliance with provisions necessary to cause compliance with this permit. However, it must remain the permittees' responsibility to determine the best way to implement this authority within their jurisdictions. Under this provision, the permittees are required to evaluate their ability to impose administrative fines for storm water violations and "if necessary" adopt ordinances to set a penalty structure.

It is not clear what triggers said "necessity." Hypothetically, a permittee might determine that it does not have the ability to impose administrative fines. Will this permittee be required to adopt a penalty structure even though the permittee might not have a need for such penalties in order to adequately enforce storm water ordinances?

Response: 40CFR122.26(d)(1)(ii) require the permittees to have adequate legal authority to control discharges to the MS4 systems. If the existing authority is not adequate to meet the criteria provided in 40CFR122.26(d)(2)(i), then the permittees are required to establish additional legal authority. The requirements included in the Order are consistent with these federal regulations and Section IX.3 of the Fact Sheet discusses the need for additional legal authority.

8. **Comment**: The March 1 deadlines are arbitrary. It is requested that the deadlines be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the dates from March 1, 2003 to July 1, 2003 and from March 2, 2004 to July 1, 2004.

   Response: Please refer to comment 191 in our March 22, 2002 response to comments. The lead-times in the San Bernardino County Order are similar to that in the Orange County Order.

9. **Comment:** IV. Receiving Water Limitations IV.3. The receiving water language differs from the negotiated language in State Water Resources Control Board Order WQ 99-05. The *precise* negotiated language included in WQ 99-05 must be included in this permit – *no more and no less -,* as said language reflects the results of an open and thoughtful dialog between the SWRCB and stakeholders, and because it is the direction provided by the SWRCB to the Regional Board. Furthermore, the negotiated language clearly provides for compliance with discharge prohibitions and receiving water limitations through the iterative process defined in WQ 99-05.

   In response to previous comments noting this difference in receiving water language, Regional Board staff noted (See reply to comment 196) that the "Additional language is provided for clarification and does not modify the intent of the negotiated language or the legal effect of the negotiated language. "Yet the Regional Board staff also noted in response to Comment 163 that, "In fact, in WQ 99-05, which amended WQ 98-01, the SWRCB prescribed the precise language that it directed be used by Regional Boards in the Receiving Water Limitations provision" and "…in its Order WQ 2001-15…the SWRCB signaled yet again that the precise language prescribed in Order WQ 99-05 – no more and no less – is that which should be included in MS4 permit Receiving Water language."

Response: Please see our response to Comment 196. The language difference does not constitute a material deviation from the State Board language.

10. **Comment**: IV.3. The permittees cannot "assure" compliance. They can "comply" or "demonstrate compliance". As written, inclusion of this word goes significantly beyond the intent of SWRCB WQ 99-05. Inclusion of the precise language in WQ 99-05 will resolve this problem.

    (Typical comment, applies throughout permit). The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature. For example, the co-permittees can "prohibit" illegal discharges through ordinances and they can take appropriate "enforcement actions" against violators, but they cannot "ensure" that illegal discharges do not occur. This issue here similar to the posting of speed limits and enforcement of posted speeds. Some recalcitrant drivers will speed and can be ticketed, fined, and in rare instances, jailed for violations of posted speeds, but short of taking control of vehicles, the police can not "ensure" that drivers don't exceed the speed limit.

    Response: Please refer to the comments from NRDC and our response, Response to Comments on the March 22, 2002 Draft, Item 3. As noted in our response, this revision is consistent with State Board's Orders No. 99-05 and 2001-15. Please note that the State Board reviewed and upheld similar language in San Diego Regional Board's Order No. 2001-01.

11. **Comment:** VI.3. The intent of this provision is not clear, and it appears that the Regional Board is acting outside of its authority. The permittees are clearly committed to maintaining adequate legal authority to require compliance with provisions necessary to cause compliance with this permit. However, it must remain the permittees' responsibility to determine the best way to implement and enforce this authority within their jurisdictions. Under this provision, the permittees are required to include in their enforcement capabilities monetary penalties, non-monetary penalties, bonding requirements, and/or permit denials/revocations/stays for non-compliance – mechanisms for which some permittees will have no need. It is doubtful that every permittee will need every mechanism noted. The decision must be left to the permittees.

    Response: Please note that the requirements specified here are consistent with 40CFR122.26(d)(1)(ii) and 40CFR122.26(d)(2)(i). Also see our response to comment 7, above.

12. **Comment:** VI.5. The words “ensure”, “assure”, or “insure” are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature.

    As currently stated, it could be interpreted to require that a permittee be physically on site whenever a commercial sidewalk is being washed so that they can “ensure” that the discharger has adequately maintained control measures such as pre-sweeping of sidewalks before rinsing. This is tantamount to requiring the DMV to inspect every car before it enters a highway in order to determine that pollution controls are in place and functional. It should be more than sufficient to have requirements in place and then to conduct periodic spot checks or observations to establish compliance and need for enforcement actions.

    As written, the word “ensuring” has the chilling effect of essentially prohibiting all of the listed discharges.

    Response: Please refer to our March 22, 2002 response to comments, Item 201.

13. **Comment:** VI.5.e. This listing suggests that the permittees will need to prohibit or develop BMP programs to control the washing of residential streets, sidewalks, driveways, and patios, and to be on site to ensure that dischargers adequately maintain the control measures. This will be problematic due to the nature of these discharges and even if these could be effectively eliminated from the residential setting, are unlikely to provide significant water quality benefits. However, in commercial and industrial areas, controls for these activities are appropriate. Suggested revised text follows.

    <u>Wash water containing chemicals or detergents resulting from the cleaning of parking lots, streets, driveways, sidewalks, patios, plazas, work areas, outdoor eating areas, and similar areas associated with municipal, industrial, and commercial sites and facilities, and association-maintained common or shared use portions of residential developments.</u>

    Response: This is the same as Comment 202; however, the proposed language above is new. We believe that in addition to commercial and industrial areas, pollutants from residential areas must also be controlled to the maximum extent practicable.

14. **Comment:** VI.6. The March 1 deadline is arbitrary. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from March 1, 2003 to July 1, 2003.

    Response: Please refer to Comment 204 and our response to it.

15. Comment: VII. Illegal Discharge/Illicit Connections; Litter, Debris, and Trash Control. VII. This provision must be revised to specifically address anthropogenic trash/litter and anthropogenic debris**.**

In the responses to our previous comment (Comment 205), the Regional Board refers to the definition of "debris" contained in Attachment 4, which reads, "Debris is defined as the remains of anything destroyed or broken, or accumulated loose fragments of rock." Clearly this definition is not limited to anthropogenic materials. As a result, VI.3 requires the permittees to implement control measures to reduce and/or eliminate the discharge of trash and debris to waters of the U.S., even if the debris is not caused by human activities. Common causes of discharges to debris to waters of the U.S. include natural erosion, erosion following fires, tree limb breakage, etc. Clearly it cannot be the intent of the Regional Board to regulate these natural phenomena. Suggested revised text follows. VII. Illegal Discharge/Illicit Connections; Litter, Debris, and Trash Control from Anthropogenic Sources

VII.3. Continuation of comment VII. Suggested revised text follows.

The permittees shall implement appropriate control measures to reduce and/or to eliminate the discharge of anthropogenic trash and anthropogenic debris to waters of the U.S. These control measures shall be reported in the annual report.

Response: The comment is the same as Comment 205 except for the suggested language. Please refer to our response to Comment 205.

16. Comment: VII.4. The timeframe for characterizing litter and trash is too soon, with only one wet season to conduct appropriate monitoring and analysis. This needs to be pushed out to allow at least two wet seasons of monitoring to allow meaningful data to be gathered**.**

Response: The request for extension of the timeframe seems appropriate. However, due to late submittal of these comments, an erratum could not be prepared on time for the Board's consideration. We recommend that an initial report be submitted with the 2002-2003 annual report and if additional characterization studies are needed, these should be conducted during the next wet season(s).

17. Comment: VIII.1 Municipal Inspections of Construction Sites

The January 31, 2003 deadline is arbitrary. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from January 31, 2003 to July 1, 2003.

While it appears that a database required by this provision would be an effective way to inventory and to track construction sites, it appears that the Regional Board is

going beyond its authority by prescribing specially how the permittees must comply. Is the issue tracking construction sites or is it having a database? If the issue is the former, the provision to provide a database must be dropped, allowing the permittees the flexibility to best determine how to comply.

It appears that the true driver behind the provision is for the Regional Board to have the permittees develop a database of sites subject to the General Permit, a permit issued by the SWRCB and enforced, in theory, by the Regional Boards, and to provide the populated database to the Regional Board. The data fields that the Regional Board mentions, site ownership, WDID number, size, location, etc. are all fields that owners of sites subject to the General Permit already provide to the State through the NOI process. In order to avoid duplication of efforts, perhaps the Regional Board should develop and provide the database to the permittees, and to populate the database with information already being collected by the State (along with a fee from each applicant) for the most significant construction projects. Thereafter, the permittees could add sites not subject to the State's permits. Why must the permittees endure the cost to develop systems and data already being collected by the State?

Response: Please refer to our response to comment #206. The State and Regional Boards have a complete database of permittees under the State's Construction and Industrial General Permits and these databases will be made available to the permittees upon request.

18. **Comment:** VIII.2 through 7. The inspection requirements for construction sites must be removed from the permit. The requirements, as included, will be enormously expensive for the permittees and will potentially provide little, if any, measurable improvement in water quality. The SWRCB, EPA, and RWQCB s have essentially acknowledged the cost and complications of the proposed inspections based on their pilot MS4 inspection results, even though the pilot study inspected only a very limited number of facilities just once (the permit requires inspection of some facilities weekly). It is beyond reasonable, beyond MEP, and beyond the intent of the CWA to cause the permittees to conduct this level of inspection and to bear the burden of the associated program when the Regional Board has not provided any benefit to cost analysis of this type of inspection program.

    Finally, the requirements seem to be more geared towards shifting the burden of responsibility for inspecting General Permit sites from the Regional Board to the permittees. It must again be noted that the SWRCB and RWQCB collect permit fees for all sites with coverage under the General Permit. These funds should be used by the SWRCB and RWQCB to conduct their own inspection program**.**

    Response: Please note that the Regional Board will continue to implement and enforce the provisions of the State's General Permit. The permittees are required to

implement and enforce the provisions of their ordinances, MS4 permit and other municipal laws and regulations.

19. **Comment**: VIII.6. The December 31, 2002 deadline is arbitrary. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from December 31, 2002 to July 1, 2003.

    The provision also suggests that required training sessions should be coordinated with the Santa Ana Regional Water Quality Control Board and that prior notification of training shall be provided to Regional Board staff. This provision must be deleted, as it is overly restrictive. As written, a permittee that trains staff without coordination with and prior notification of Regional Board staff would be in violation of the permit. This is simply micro management to an unacceptable degree and beyond the reasonable extension of authority of the Regional Board.

    Response: Board staff regularly attends NPDES coordinators' meetings and has participated in the training programs. The intent here is not to restrict the permittees training programs in any way; but to support and promote the training activities. Furthermore, we have been receiving e-mail notification regarding the training programs and we do not see it as a significant burden to continue this notification**.**

20. Comment: IX. Municipal Inspections of Industrial Facilities. IX.1. While it appears that a database required by this provision would be an effective way to inventory and to track industrial sites, it appears that the Regional Board is going beyond its authority by prescribing specially how the permittees must comply. Is the issue tracking industrial sites or is it having a database? If the issue is the former, the provision to provide a database must be dropped, allowing the permittees the flexibility to best determine how to comply.

It appears that the true driver behind the provision is for the Regional Board to have the permittees develop a database of sites subject to the General Permit, a permit issued by the SWRCB and enforced, in theory, by the Regional Boards, and to provide the populated database to the Regional Board. The data fields that the Regional Board mentions, ownership, SIC, WDID, size, location, etc. are all fields that owners of sites subject to the General Permit already provide to the State through the NOI process. In order to avoid duplication of efforts, perhaps the Regional Board should develop and provide the database to the permittees, and to populate the database with information already being collected by the State (along with a fee from each applicant) for the most significant industrial projects. Thereafter, the permittees could add sites not subject to the State's permits. Why must the permittees endure the cost to develop systems and data already being collected by the State?

Response: Please refer comment #206. The State and Regional Boards have a complete database of permittees under the State's Construction and Industrial General Permits and these databases will be made available to the permittees upon request.

21. **Comment**: IX.2 through 10. The inspection requirements for industrial facilities must be removed from the permit. The requirements, as included, will be enormously expensive for the permittees and will potentially provide little, if any, measurable improvement in water quality. The SWRCB, EPA, and RWQCB s have essentially acknowledged the cost and complications of the proposed inspections based on their pilot MS4 inspection results, even though the pilot study inspected only a very limited number of facilities just once (the permit requires inspection of some facilities monthly). It is beyond reasonable, beyond MEP, and beyond the intent of the CWA to cause the permittees to conduct this level of inspection and to bear the burden of the associated program when the Regional Board has not provided any benefit to cost analysis of this type of inspection program.

    Finally, the requirements seem to be more geared towards shifting the burden of responsibility for inspecting General Permit sites from the Regional Board to the permittees. It must again be noted that the SWRCB and RWQCB collect permit fees for all sites with coverage under the General Permit. These funds should be used by the SWRCB and RWQCB to conduct their own inspection program.

    Response: Please note that the Regional Board will continue to implement and enforce the provisions of the State's General Permit. The permittees are required to implement and enforce the provisions of their ordinances, MS4 permit and other municipal laws and regulations.

22. **Comment**: IX.9. The provision also suggests that required training sessions should be coordinated with the Santa Ana Regional Water Quality Control Board and that prior notification of training shall be provided to Regional Board staff. This provision must be deleted, as it is overly restrictive. As written, a permittee that trains staff without coordination with and prior notification of Regional Board staff would be in violation of the permit. This is simply micro management to an unacceptable degree and beyond the reasonable extension of authority of the Regional Board.

    Response: Board staff regularly attends NPDES coordinators' meetings and has participated in training programs. The intent here is not to restrict the permittees training programs in any way; but to support and promote the training activities. Furthermore, we have been receiving e-mail notification regarding the training programs and we do not see it as a significant burden to continue this notification**.**

23. **Comment:** X.1 Municipal Inspections of Commercial Facilities - While it appears that a database required by this provision would be an effective way to inventory and

to track commercial sites, it appears that the Regional Board is going beyond its authority by prescribing specially how the permittees must comply. Is the issue tracking commercial sites or is it having a database? If the issue is the former, the provision to provide a database must be dropped, allowing the permittees the flexibility to best determine how to comply.

It appears that the true driver behind the provision is for the Regional Board to have the permittees develop a database of sites that may someday be subject to a General Permit for Commercial Facilities, a permit that would likely be issued by the SWRCB and enforced, in theory, by the Regional Boards, and to provide the populated database to the Regional Board. The data fields that the Regional Board mentions, ownership, size, location, etc. are all fields similar to what the SWRCB collects for industrial facilities and would likely collect for commercial facilities as part of the process to obtain coverage under a future commercial permit. In order to avoid duplication of efforts, perhaps the Regional Board should develop and provide the database to the permittees, and to populate the database with information that they will likely be collecting as part of a permit coverage process (along with a fee from each applicant). Thereafter, the permittees could add sites not subject to the State's permits. Why must the permittees endure the cost to develop systems and data that clearly should be the responsibility of the State?

Response: The federal storm water laws and regulations do not require permits for commercial facilities. Neither the State Board nor the Regional Board is contemplating a General Storm Water Permit for commercial facilities and as such we do not have a database of commercial facilities.

24. Comment: X.2 through 9. The inspection requirements for commercial facilities must be removed from the permit. The requirements as included will be enormously expensive for the permittees and will potentially provide little if any measurable improvement in water quality. The SWRCB, EPA, and RWQCB s have essentially acknowledged the cost and complications of the proposed inspections based on their pilot MS4 inspection results, even though the pilot study inspected only a very limited number of facilities just once (the permit requires inspection of some facilities monthly). It is beyond reasonable, beyond MEP, and beyond the intent of the CWA to cause the permittees to conduct this level of inspection and to bear the burden of the associated program when the Regional Board has not provided any benefit to cost analysis of this type of inspection program.

Finally, the requirements seem to be more geared towards shifting the burden of responsibility for inspecting General Permit sites from the Regional Board to the permittees. It must again be noted that the SWRCB and RWQCB collect permit fees for all sites with coverage under the General Permit. These funds should be used by the SWRCB and RWQCB to conduct their own inspection program.

Response: Please note that the requirements included here are to establish priorities for inspection of commercial sites based on a threat to water quality. Many of these facilities may not have to be inspected on a regular basis.

These facilities are not regulated under the State's General Permits, we do not collect any fees from these facilities, and thus, there is no shifting of responsibility.

25. **Comment**: X.9. The provision also suggests that required training sessions should be coordinated with the Santa Ana Regional Water Quality Control Board and that prior notification of training shall be provided to Regional Board staff. This provision must be deleted as it is overly restrictive. As written, a permittee that trains staff without coordination with and prior notification of Regional Board staff would be in violation of the permit. This is simply micro management to an unacceptable degree and beyond the reasonable extension of authority of the Regional Board.

Response: Please note that this provision is only to insure that the training program that is developed and implemented is consistent with the federal regulations and is at an appropriate level. In the past, Board staff has participated and provided input to the permittees with their training programs.

26. **Comment:** XII. New Development (Including Significant Re-Development) XII.A.1. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature.

Delete any reference to the permittees being responsible for ensuring that all construction projects and industrial facilities that are subject to the General Permit obtain coverage and have filed a NOI. The requirements of this provision seem to be geared towards shifting the burden of responsibility for General Permit compliance by construction sites and industrial sites from the Regional Board to the permittees. It must again be noted that the SWRCB and RWQCB collect permit fees for all sites with coverage under the General Permit. These funds should be used by the SWRCB and RWQCB to conduct their own verification program.

Response: Please note that the Regional Board will continue to implement and enforce the provisions of the State's General Permit. The permittees are required to implement and enforce the provisions of their ordinances, MS4 permit, and other municipal laws and regulations.

27. **Comment**: XII.A.7. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature.

Response: The nomenclature used in the permit is appropriate considering the fact that the federal regulations require the permittees to establish adequate legal authority. Furthermore it is consistent with other MS4 permits that have been adopted and upheld by the State Board.

28. **Comments**: XII.A.10. The words "ensure", "assure", or "insure" are inappropriate nomenclature for the powers that the permittees have. Therefore, these words need to be deleted throughout the permit and replaced with appropriate nomenclature.

    Response: The nomenclature used in the permit is appropriate considering the fact that the federal regulations require the permittees to establish adequate legal authority. Further more it is consistent with other MS4 permits that have been adopted and upheld by the State Board.

29. **Comment:** XII.B.3.a. Delete the reference to the 24-hour storm event. Instead, use 85th percentile storm event. Further clarification can be provided by specifying an event period.

    The Regional Board's response to **comment 215** does not address the issue of the fictitious "24-hour storm event" raised by the comment. The tabulation of daily rainfall totals was established as convenient mechanism for recording rainfall – someone was charged with reading the rain gage once per day every day and recording the depth. This approach served the need to provide "big picture" statistics regarding rainfall in an area. However, rainstorms are rarely 24 hours in length nor do they start and stop the same time everyday. In fact, the duration and intensity of storm events vary considerably. Fortunately, technology has been available for many years that allows the recording of hourly rainfall totals, and even ten or fifteen minute totals in many areas. It's from these more continuous records that we can systematically and logically model rainfall events that have the greatest impact on water quality.

    The Regional Board's response to comment 215 states that the "24-hour storm" is widely used to denote the intensity during a 24-hour storm. It may be widely used by the lay person, but not for the purpose stated, and certainly not by professionals in the field of hydrology. In fact, the 24-hour timeframe is nearly useless in determining intensities that reflect real-world conditions as rainfall intensities vary considerably over the course of many storms. For example, if 0.24 inches of rain fell in one hour on one day and there was a total of 0.24 inches of rain for the 24-hour period, the comment by the Regional Board would seemingly have one calculate the storm intensity to be 0.01 inches/hour (over the fictitious 24-hour event), when in fact the intensity is in actuality closer to 0.24 inches /hour (over the actual storm event duration of 1 hour). A rainfall of 0.01 inches/hour rarely produces runoff from developed areas, whereas an intensity of 0.24 inches hour usually produces runoff from these same areas.

The methods in Urban Runoff Quality Management refer to capture percentiles based on continuous simulations from hourly or more frequent datasets, not from the fictitious 24-hour storm. For consistency with the reference material, delete the reference to the 24-hour storm.

Response: We agree that there is considerable variation in the duration and intensity of storm events. However, we disagree with the interpretation of the 24-hour storm event and the examples provided in the comment. Please note that B.3.a. 1) provides the design criteria for designing infiltration/treatment systems. You do not take the 24-hour storm event and calculate the one-hour storm intensity from it. The permit also provides other options for designing infiltration/treatment systems or to propose regional treatment systems.

30. **Comment**: XII.B.3.b. Option 3 is a confusing restatement of option 2 and, therefore, should be deleted.

    Response: Please note that Option 2 is volume-based and Option 3 is flow-based.

31. **Comment:** XIII. Public Education and Outreach. XIII.1. The October 30, 2002 deadline is arbitrary and way too soon for an adequate survey to be planned, conducted, and results analyzed. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from October 30, 2002 to July 1, 2003**.**

    Response: The time schedules provided here are consistent with the directives from the Regional Board to provide the same lead-time as in the Orange County MS4 permit.

32. **Comment:** XIII.3. The January 15, 2003 deadline is arbitrary and too soon. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from January 15, 2003 to July 1, 2003**.**

    Response: The time schedules provided here are consistent with the directives from the Regional Board to provide the same lead-time as in the Orange County MS4 permit.

33. **Comment:** XIII.6. Change the word “best” to “appropriate.” The word “best” denotes optimal, and given the myriad of variables to evaluate in establishing the mechanism, it will be difficult to establish that the “best” mechanism has been selected.

Response: We hope that the permittees can and will establish an optimal mechanism for distributing educational materials.

34. Comment: XIV. Municipal Facilities/Activities.XIV.3. This provision requires the permittees to coordinate with private associations that are not permittees and over which the permittees have no jurisdiction. Suggested revised text follows.

By July 1, 2003, the permittees~~, in coordination with the San Bernardino County Fire Chiefs Association,~~ shall develop a list of appropriate BMPs to be implemented to reduce pollutants from training activities, fire hydrant/sprinkler testing or flushing, non-emergency fire fighting, and any BMPs feasible for emergency firefighting flows.

Response: We see a definite benefit and a need to coordinate these activities with the affected entities.

35. Comment: XIV.4. The October 1, 2002 deadline is arbitrary and too soon to develop and to distribute new fact sheets. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from October 1, 2002 to July 1, 2003. The results can still be reported in the 2002-2003 Annual Report.

Response: Please note that most of these requirements reflect modifications of existing programs and the information for a fact sheet should be already available.

36. Comment: XIV.5. The September 1, 2002 deadline is arbitrary and too soon to develop and to distribute new guidelines. It is requested that the deadline be moved to correspond to the fiscal planning year for permittees. The fiscal planning year will also correspond to the reporting periods for the Annual Report. Change the date from October 1, 2002 to July 1, 2003. The results can still be reported in the 2002-2003 Annual Report.

Response: The time schedules provided here are consistent with the directives from the Regional Board to provide the same lead-time as in the Orange County MS4 permit**.** Accordingly, the September 1, 2002 has been changed to October 1, 2002**.**

37. Comment: XIV.11. This provision does not distinguish the significant difference permittee agencies (and the departments, divisions, and subdivisions therein) and other agencies with a presence in San Bernardino County. This lack of distinction causes confusion with respect to the lines of responsibility under the permit. The permittees clearly acknowledge that their status as permittees includes all subdivisions within their agency. The permittees request that the Regional Board clearly acknowledge that there are agencies within the County of San Bernardino

that 1) are not permittees, and 2) are cannot be regulated by the permittees. Suggested text follows**.**

Successful implementation of the provisions in this order will require cooperation among and between the permittees. The permittees have developed an Implementation Agreement among the SBCFCD, the County and the cities. The Implementation Agreement establishes the responsibilities of each party and a funding mechanism for the shared costs, and recognizes the Management Committee. Furthermore, within each individual permittee's agency, successful implementation of the this order will require the cooperation of the various departments, divisions, and subdivisions of the permittee (e.g., Fire Department, Department of Environmental Health, Planning Department, Transportation Department, Parks and Recreation, Building and Safety, Code Enforcement, etc.). The permittees have developed inter-departmental training programs and have made commitments to conduct a certain number of these training programs during the term of this permit as a means to facilitate agency-wide compliance with this order.

Successful implementation of the provisions in this Order will require the cooperation of all the public agency organizations within San Bernardino County having programs/activities that have an impact on storm water quality (A list of these organizations in included in Attachment 3). ~~(e.g., Fire Department, Department of Environmental Health, Planning Department, Transportation Department, Parks and Recreation, Building and Safety, Code Enforcement, etc.)~~ As such, these organizations are expected to actively participate in implementing this area-wide storm water program. If any entity, such as those listed in Attachment 3, is determined to cause or contribute to violations of this Order, the Regional Board has the discretion and authority to require the non-cooperating entity to participate in this area-wide permit (subject to entering into the Implementation Agreements) or obtain individual storm water discharge permits, pursuant to 40 CFR 122.26(a). ~~The permittees shall be responsible for involving the public agencies in their storm water program.~~

Response: Please refer to our response to Comment 222; intra and intergovernmental coordination are critical for the successful implementation of the storm water program.

38. Comment: XV.2 Municipal Construction Projects/Activities Delete this provision or revise it to delete references to the one-acre threshold. This provision requires compliance with the State General Permit for Construction Sites for sites between 1 and 5 acres. The General Permit does not yet cover sites in the 1 to 5 acres size, so it is premature to include this provision. This item could be addressed simply by requiring compliance with the most recent edition of the State's General

Construction Permit without making specific reference to the size of projects covered. This allows the program to evolve with the evolution of the General Permit.

Response: Please note that this requirement is consistent with the Phase II Storm Water Regulations.

39. Comment: XVI.3 Program Management/MSWMP Review - This provision directs the permittees to revise the MSWMP at the direction of the Executive Officer, including waste load allocations(WLA) from Total Maximum Daily Loads (TMDLs). Given the importance of TMDLs, the appropriate portions of the TMDL, namely the WLAs and implementation plans, if they are to be incorporated at all, should be incorporated only through amendments to the permit made by the Regional Board, and only with due consideration and application of the MEP standard for compliance with the WLA or implementation plan. Only then should the MSWMP be revised. Revise this provision to reflect that the Executive Officer's authority extends only to minor, administrative changes to the MSWMP and only to changes required to effectuate compliance with the permit, not the wholesale incorporation of new and significant requirements**.**

Response: We believe that the MSWMP is a dynamic document and as the storm water program evolves, the MSMWMP should be revised to reflect the changes.

41. Comment: XVIII. Provisions. XVIII.1. This requires, "All reports that are submitted as per requirements of this Order for the approval of the Executive Officer shall be publicly noticed and……" Does this mean that the Annual Reports need to be publicly noticed?

Response: This applies to reports that are submitted for the approval of the Executive Officer; there is no need to publicly notice the annual report.

42. Comment: XVIII.5. The receiving water limitations section describes the actions to be taken should the MSWMP fail to meet permit objectives. Therefore, the last sentence of this provision must be deleted. Suggested text revisions follow.

The permittees shall, at a minimum, implement all elements of the MSWMP and its components, as included in the ROWD. Where the dates are different from the corresponding dates in this Order, the dates in this Order shall prevail. Any proposed revisions to the MSWMP shall be submitted with the Annual Report to the Executive Officer of the Regional Board for review and approval. All approved revisions to the MSWMP shall be implemented as per the time schedules approved by the Executive Officer. ~~In addition to those specific controls and actions required by: (1) the terms of this Order and (2) the MSWMP and its components, each permittee shall implement additional controls, if any are necessary, to reduce the discharge of pollutants in storm water to the maximum extent practicable as required by this Order.~~

Response: The iterative process described in the receiving water limitations section deals with exceedances of water quality objectives. Other programs and policies may be needed to reduce the discharge of pollutants in storm water discharge to the maximum extent practicable.

43. Comment: Attachment 4

Revise the definition of debris to be consistent with debris that is of concern under this permit, that is, debris that is anthropogenic in nature.

Response: We do not see a need to revise the definition; for purposes of water quality protection, the sources of debris whether anthropogenic or not is of less importance; how the debris is managed is the critical factor.

General

44. Comment: The permit needs to clearly reflect that changes to the permit must only be made by the Regional Board at a duly noticed public hearing. It should also be noted in the permit that documents referenced by the permit may change and that said changes constitute a change in the permit which must be adopted by the Regional Board at a duly noticed public hearing.

Response: Please note that Section 13223 of the Water Code allows the Regional Board to delegate some of its powers and duties to the Executive Officer. However, issuance, modification, or revocation of waste discharge requirements, including MS4 permits, cannot be delegated to the Executive Officer. So any proposed changes to the permit will be duly noticed and will only be adopted by the Board through the public hearing process. In addition, any action of the Executive Officer can be appealed to the Board.

45. Comment: The permit requires programs that go well beyond the limits of the CWA, and thus these extra and extended provisions become mandates of the State. As such, these mandates are in violation of the California Constitution unless the State provides funds to reimburse the permittees for the costs associated with the State mandated program. Please delete all requirements that go beyond the CWA limits, or provide funding to reimburse each permittee.

Response: The permit implements the federal laws as specified in the Clean Water Act and the federal regulations for implementing these laws. There are no requirements that go beyond the Clean Water Act.

46. **Comment:** There are numerous, expensive, and cumbersome programs mandated by this permit. The Regional Board has provided no evidence that these numerous, expensive, and cumbersome programs will improve water quality in general, restore beneficial use to impaired waters, or protect waters from becoming impaired. To a

large degree, this is a “feel good” program mandated in the absence of clear and convincing evidence that the program will achieve its objectives or is at all cost effective. The permit must not be adopted until such considerations are made and become available. To issue this permit without such consideration, permittees will be forced to endure irreparable financial harm.

Response: Please note that the permit implements the federal laws and regulations and the requirements in the permit are consistent with other precedent setting MS4 permits, which have been upheld by the State Board.

47. **Comment:** There are numerous and significant issues with the proposed tentative permit, and it is unlikely that these issues can be resolved in a one-day hearing before the Board. Furthermore, since this permit is already over one year over due, despite the timely application and diligence by the permittees, it seems there would be little harm in remanding this permit back to staff for resolution of issues and results of the numerous appeals on similar permits now before the SWRCB. Thus, the permittees request the adoption of the permit be set aside, and that the permit be remanded to staff for revision.

Response: The requirements in the permit evolved through the discussions with the permittees and other interested parties since the first draft of this permit was released for public comment on August 21, 2001. The Board conducted two public workshops and one public hearing. Any further delays to adopting the permit are not justified.